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**OFFICE OF PETITIONS**

In re Application of :  
Raymond V. Damadian et al :  
Application No. 09/992,733 : DECISION ON PETITION  
Filed: November 14, 2001 : UNDER 37 CFR 1.8(b)  
Attorney Docket No. 23242-1019 :

This is a substitute decision on the petition under 37 CFR 1.137(b), filed July 30, 2003, and a decision on the supplemental petition filed on August 26, 2003. These petitions, which for the reasons stated below, are being treated as a petition under 37 CFR 1.8(b) requesting withdrawal of the holding of abandonment in the above-identified application. The decision mailed August 20, 2003 granting the petition under 37 CFR 1.137(b) is vacated.

The petition to withdraw the holding of abandonment is granted.

This application was held abandoned for failure to timely reply to the Notice to File Missing Parts of Nonprovisional Application, Filing Date Granted, mailed December 10, 2001, which set a two month extendible period for supplying the items noted thereon; namely, an executed oath or declaration and a \$130 surcharge fee for the late filing of an executed oath or declaration. A Notice of Abandonment was mailed on May 30, 2003.

In both the petition filed July 30, 2003 and the supplemental petition filed August 26, 2003, petitioner states that a reply to the Notice was in fact timely filed. To support this assertion, petitioner has supplied a copy of the previously filed correspondence bearing a certificate of mailing date of February 4, 2002 and a copy of a return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on July 23, 2003, which date is over 17 months from the date of the alleged mailing, of the following items: Transmittal Letter with mailing certificate under 37 CFR 1.8(a); Declaration and Power of Attorney; copy of notification; and an Assignment and Recordation Cover Sheet.

The reply stated to have been mailed via certificate of mailing on February 4, 2002 cannot be located. However, failure to

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receive correspondence which includes a certificate of mailing is addressed in 37 CFR 1.8(b), reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence,

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate, and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petitions comply with the provisions of 37 CFR 1.8(b) in that the certificate of mailing dated February 4, 2002 and the statement of the previously timely mailing of the reply to the Notice of December 10, 2001 were done by petitioner herein. Accordingly, the Notice of Abandonment mailed on May 30, 2003 is hereby vacated and the holding of abandonment withdrawn.

As requested, the \$1,300 petition fee submitted on July 30, 2003 will be refunded to petitioner's deposit account in due course.

This application is being forwarded to Technology Center AU 2859 for examination in due course.



Frances Hicks  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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